the vessel any further care, it might be claimed that his want of care ought not to be attributed to him *as a fault.* In reference to such a case, we do not now express any opinion." *Williams* v. *Hays*, 143 N. Y. 442. After a new trial, this reserved question came before the Supreme Court, which held that, applying the principle stated by the Court of Appeals, it could make no possible difference how the defendant became insane, or "what caused the disease or mental condition that prevented him from exercising the care or skill that he was bound to exercise." *Williams* v. *Hays*, 37 N. Y. Supp. 708.

The position of the Supreme Court is undoubtedly logical and necessary. If the general rule holds liable one rendered insane by act of God, it would require an unwholesome exercise of ingenuity to make an exception in favor of one rendered insane by extra and commendable effort. The proposition laid down by the Court of Appeals, on the other hand, seems hardly defensible. It is a subject on which there is a wide disagreement of the authorities (see 10 HARVARD LAW REVIEW, 65), and which therefore may well be settled in the pure light of reason. The Court of Appeals rested its decision on two grounds. First, that public policy required that a lunatic should be liable, which view appears to be largely fanciful; and second and chiefly, that "where one of two innocent persons must bear a loss, he must bear it whose act caused it." This last proposition clearly belongs to the doctrine of absolute liability, which was never to be defended with adequate reason, and which is now generally discredited. Even the Court of Appeals, in the principal case, while laying down a rule of absolute liability showed an unwillingness to stand squarely on such a doctrine by reserving opinion on a possible phase of the case before them. A theory, the advocates of which are forced to striking inconsistencies, does not commend itself to reason. The modern and enlightened view is thus stated by Beven, Vol. I. p. 52, 2d ed.: "Liability for trespass is not absolute and in any event, but dependent on the existence of fault." (Also *Brown* v. *Kendall*, 6 Cush. 292. Holmes on the Common Law, 77, *et seq.*) If blame or fault is indeed the basis of liability in tort, how can one blamelessly and totally insane be liable for the consequence of his negligence? To hold that he is, certainly is a step in the wrong direction.

RIGHT TO SUPPORT OF LAND. — A distinction of some delicacy, that might occasionally prove important to land-owners, is discussed in the case of *Cabot* v. *Kingman*, 44 N. E. Rep. 344 (Mass.). A city dug a ditch in a street to lay a sewer. Lying a little below the surface and extending under the abutting land were beds of fine sand, which were so full of water that as the latter flowed into the ditch it carried quantities of sand with it; and this sand was taken out by the pumps along with the water. The withdrawal of the sand caused the abutting land to subside; and the owners brought an action for the damage. The court allowed the plaintiff to recover, holding that he had a right to the support of the particles of soil which the defendant had removed, no matter how the latter had done so. A strong minority, however, held that the plaintiff could not complain of the withdrawal of the flowing quicksand. Now, not only is it settled that a man cannot complain of his neighbor for withdrawing percolating water from under his land (*Chasemore* v. *Richards*, 7 H. L. Cas. 349), but, what is more to the point, it has been held in

England that he cannot complain of the loss of support of underground water, whether collected in a body (*Northeastern Ry. Co.* v. *Elliot*, 1 J. & H. 145), or dispersed through the soil (*Popplewell* v. *Hodkinson*, 4 Exch. 248), though the damage be directly caused by the acts of his neighbor. On the other hand, it is established that he is entitled absolutely to the support of the soil under him, even though it be so soft that a neighbor digging on the adjoining land is obliged to take extraordinary precautions to keep it from falling away. *Gilmore* v. *Driscoll*, 122 Mass. 119. The question then is whether the courts are to liken this sort of quicksand to soil or to water. It seems at first to be rather soil than water; but when it is considered that the essential distinction between earth and water for the purpose of such a case lies rather in the liquidity of the latter than in its chemical composition, it may be doubted whether the minority of the court was not right in treating everything that could be taken up by pumps as water.

A CHURCH DIVIDED AGAINST ITSELF. — In the case of *Smith* v. *Pedigo*, 44 N. E. Rep. 363, and 33 id. 777, we have the practically unanimous opinion of the Supreme Court of Indiana on the interesting question as to whether a church may change its doctrine and yet keep the property that has been given it. An unincorporated religious society was known as the "Mt. Tabor Regular Baptist Church," and held property given to it by that name, the title being vested in trustees elected by the society. The members were originally all "Regular Baptists," holding the strict Calvinistic, or "anti-means," doctrine of salvation. Religious controversies arising, a majority of the members turned to the opposite or "means" doctrine, and changed the name of the church to the "Mt. Tabor Means Baptist Association."

The society was then divided into two factions, each of which declared itself the true Mt. Tabor Baptist Church, expelled the other faction, elected trustees, and claimed the church property. One faction had the majority of the old society, but new doctrines and a new name. The court held that the minority who adhered to the old doctrines and name were entitled to the church property. The cases cited by the court, though not perfectly clear, appear to support this view; and probably the weight of authority is in its favor. Yet the question may well be considered doubtful. In Massachusetts during the early part of the century a great number of churches turned from Trinitarian to Unitarian, and kept the church property, against the vigorous protests of faithful minorities. The Indiana court seems to have misapprehended two of the cases arising out of this religious revolution, *Baker* v. *Fales*, 16 Mass. 488, and *Stebbins* v. *Jennings*, 10 Pick. 172, which they cite in support of their opinion. These cases really decide only that a minority of the "church," i. e. a smaller body of communicants contained within the whole body of pew-holders constituting the religious society or "congregation," might appoint the trustees to hold the property for the benefit of the majority of the congregation, disregarding a majority of the "church-members," who had withdrawn from the congregation. In both cases, however, the people who kept the property were the Unitarians, and the protesting "church-members" were the Orthodox Trinitarians. If any doubt had been entertained as to the right of the majority of the congregation to alter its doctrine or its name, the possession of the property